

REMARKS/ARGUMENTS

Favorable reconsideration of this application in view of above amendments and following discussion is respectfully requested.

Claims 1-65 are pending in this application. Claims 5-7, 14, 16-18, 21-22, 24-28, 31-33, 36, 38, 40-45, 47, 49-53 and 55-59 are withdrawn from consideration. By this Amendment, the specification is amended; the Abstract is amended; Claims 1, 19 and 34 are amended; Claims 60-65 are added; and no claims are canceled herewith. It is respectfully submitted that no new matter is added by this Amendment.

In the outstanding Office Action, the Abstract was objected to; the specification was objected to; Claim 19 was objected to; Claims 1-4, 8, 9, 11, 13, 19, 29, 30, 34, 35, 37, 46, 48 and 54 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 1,947,720 to Laub; Claim 20 was rejected under 35 U.S.C. § 103(a) as unpatentable over Laub; Claims 10 and 12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Laub and further in view of U.S. Patent No. 4,083,078 to Shimizu; and Claims 15, 23 and 39 were rejected under 35 U.S.C. § 103(a) as unpatentable over Laub and further in view of U.S. Patent No. 3,070,102 to MacDonald.

With respect to the objection to the Abstract, the Abstract is amended by the present amendment. Accordingly, withdrawal of the objection to the Abstract is respectfully requested.

With respect to the objection to the specification, the specification is amended by the present amendment. Accordingly, withdrawal of the objection to the specification is respectfully requested.

With respect to the objection to the Claim 19, Claim 19 is amended by the present amendment. Accordingly, withdrawal of the objection to Claim 19 is respectfully requested.

With respect to the rejection under § 102(b), Laub does not teach or suggest a reservoir containing a product and an applicator portion arranged on a side of the reservoir, the applicator portion being isolated from the reservoir at least before first use of the applicator and a means to establish communication between the reservoir and the applicator portion in response to an operating action at least during first use of the applicator, with the applicator portion being permeable to the product, as recited in Claim 1 and similarly recited in Claim 34.

Instead, Laub discloses a toothbrush having a container 10 formed with sidewalls having ribs 16 and 17 to secure a finger holder 18. A paste 12 is contained within a hollow portion of the container 10. When it is desired to extrude the paste through the slot formed in the housing 10, the upper wall of the container is depressed and the membrane 29 is fractured to allow the paste 12 into the area of bristles 25. That is, when the membrane is broken, the openings in Laub are located in an area between the bristles 25, which is remote from the applicator portion. As such, there is no teaching or suggestion for having product dispensed from a reservoir and having an applicator portion that is permeable to the product, as recited in the independent claims. Again, Laub merely discloses bristles 25 attached to a bottom surface of the housing 10 and when the paste 12 is discharged from the housing 10, the paste slides into the bristles 25 for use during brushing. However, the bristles 25 do not constitute an applicator portion that is permeable to a product.

Neither Shimizu nor MacDonald make up for the deficiencies of Laub discussed above nor does the Office Action assert as such. For example, Shimizu merely discloses a toothbrush having a brush head 2 and a pad 3 that can be made of a foamed plastic material. Shimizu is directed to making a toothbrush with pad that is structured to massage both the interior and exterior of the teeth. However, there is no teaching or suggestion for having an applicator portion in communication with a reservoir portion with the applicator portion

permeable to the product contained in the reservoir. Moreover, it is respectfully submitted that there is no basis in the teachings of either Laub or Shimizu to support their applied combination. Certainly, the outstanding Office Action fails to cite to any specific teachings within either reference to support the applied combination. Again, Laub is concerned with the dispensing of toothpaste between the bristles 25, which is remote from the applicator portion. Shimizu is directed to making a toothbrush with a particular shape in order to massage certain areas of the teeth. Accordingly, it is respectfully submitted that the combination of Laub with Shimizu is the result of hindsight reconstruction in view of the teachings of the present specification, and is improper.

Further, the applied art does not teach or suggest that the applicator portion has a first surface configured to engage a portion of a body during use and a second surface secured to the second side of the reservoir, wherein the second surface of the applicator portion and membrane have a substantially same area, as recited in Claim 60.

Nor does the applied art teach that the applicator portion covers an opening in the membrane created by the breaking of the membrane, as recited in Claim 61. Laub merely discloses bristles 25 which do not cover the opening created by the breaking of the membrane 29. Further, the applied art does not teach or suggest that after breaking, the product flows through the broken membrane so that it passes through the applicator portion to an application surface of the applicator, as recited in Claim 62.

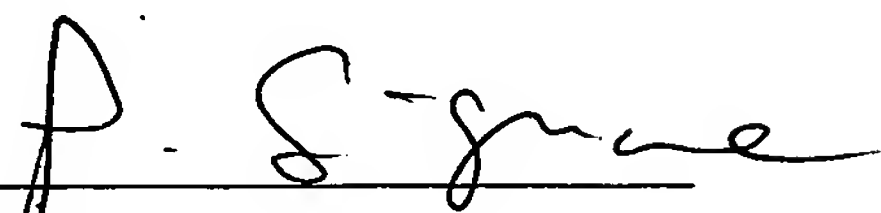
Accordingly, withdrawal of the rejection of the claims under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) is respectfully requested.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Steven P. Weihrouh
Attorney of Record
Registration No. 32,829

Philippe J.C. Signore
Registration No. 43,922

Kevin M. McKinley
Registration No. 43,794

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

SPW:KMM/rle

I:\ATTY\KMM\PROSECUTION WORK\239209\239209US-AM.DOC